S.B.CIVIL WRIT PETITION NO.3379/1997

Abdul Karim v. State of Raj.& Ors.

Date of Order :: 2nd December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.M.Bohra, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. R.S.Chundawat, for the respondents.

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This petition for writ is directed against the order dated 22.7.1997 passed by Dy. Secretary to the Government of Rajasthan, Department of Mines, exercising powers under Rule 47 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as “the Rules of 1986”).

The facts in brief are that the petitioner submitted an application for renewal of mining lease which came to be rejected by an order dated 13.6.1996 passed by the Assistant Mining Engineer, Jalore being time barred. An appeal preferred by the petitioner under Rule 43(1) of the Rules of 1986 was accepted by the additional Director (Mines), Jodhpur Zone, Jodhpur by an order dated 12.8.1996. The Additional Director (Mines), Jodhpur Zone, Jodhpur by the order aforesaid condoned delay in submitting application for renewal of mining lease looking to the fact that the petitioner was suffering from serious ailment and, therefore, he was not in a position to move application within the period prescribed. The

Additional Director (Mines) while condoning delay and renewing mining lease also taken into consideration the huge investments made by the petitioner in removing overburden in constructing roads and in making advance payments to the labourers. The mining lease was renewed with the penalty of 20% of the standard rent.

A challenge to the order dated 12.8.1996 was given by respondent No.4 Shri Taga Ram by way of filing a revision petition under Rule 47 of the Rules of 1986. The appellate authority accepted the appeal by the order impugned while holding that condonation of delay after declaring the mining area vacant was not proper. Hence present writ petition is preferred by the petitioner.

A reply to the writ petition is filed on behalf of the respondent State and officers of the mining department contending therein that there was no justification for condoning delay in submitting application for renewal of mining lease. No reply to the writ petition is filed on behalf of respondent No.4 Shri Taga Ram.

Heard counsel for the parties.

There is no dispute between the parties that the power to condone delay in submitting an

application for renewal vests with the respondents and it could be condoned for sufficient reasons. In the present case the Additional Director after considering all available facts on record condoned the delay by imposing a penalty i.e. 20% of standard rent. The revisional authority interfered with the order passed by the appellate authority only on the count that the mining area was declared free, therefore, the appellate authority should have not condoned the delay.

I have examined the order passed by the Additional Director as well as by the revisional authority. The Additional Director (appellate authority) after taking into consideration the fact that the petitioner was suffering from serious ailment and that he invested huge amount in removing overburden, constructing roads and in making advance payments to the labourers condoned the delay and renewed the mining lease. The revisional authority reversed the order of the appellate authority on the ground that the mining area was declared vacant, therefore, delay was erroneously condoned. The revisional authority while altering decision of the appellate authority failed to appreciate that in pursuant to the order dated 12.8.1996 the renewal was already made on 24.9.1996 and the contract too was executed on 17.12.1996 and it was also registered on 17.12.1996. The application for renewal was also submitted prior to declaration of the area concerned

vacant, as such there was no occasion to reverse the order passed by the appellate authority. The appellate authority exercised jurisdiction vested with it judiciously by taking into consideration the facts available on record and after reaching at the conclusion that there were reasons sufficient to condone delay. The revisional authority should always be slow in interfering with such discretionary orders.

Looking to all the facts and circumstances of this case I am is of the considered opinion that the revisional authority erred while interfering with the order dated 12.8.1996 passed by the appellate authority i.e. the Additional Director (Mines), Jodhpur Zone, Jodhpur.

Accordingly, this petition for writ is allowed. The order dated 22.7.1997 (Anx.2) is quashed and the order dated 12.8.1996 passed by the appellate authority i.e. Additional Director (Mines), Jodhpur Zone, Jodhpur is restored.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.